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15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 SAN FRANCISCO DIVISION

18 UNITED STATES OF AMERICA, et al., ex
19 rel. ALLEN KUO,

20 Plaintiffs,

21 v.

22 GILEAD SCIENCES, INC.,

23 Defendant.

) CASE NO. 17 cv 2612 JSC

) **NOTICE OF ELECTION TO DECLINE**
) **INTERVENTION; [PROPOSED] ORDER TO**
) **UNSEAL**

) **FILED UNDER SEAL**

24
25 Pursuant to the False Claims Act, 31 U.S.C. § 3730(b)(4)(B), the United States notifies
26 the Court of its decision not to intervene in this action. In addition, Carrie Bashaw, Senior Counsel for
27 the Washington State Medicaid Fraud Control Unit, and Erika Hiramatsu, Deputy Attorney General for
28 the State of California, have represented to the undersigned that the States of California, Colorado,

1 Connecticut, Florida, Georgia, Illinois, Louisiana, Maryland, Massachusetts, Michigan, Minnesota,
2 Nevada, New Jersey, New York, North Carolina, Rhode Island, Tennessee, Texas, Virginia, and
3 Washington, as well as the District of Columbia (collectively the “States”), named as co-plaintiffs in this
4 action have also determined not to intervene in this action. Collectively the United States and States are
5 referred to in this action as the “Government.”
6

7 Although the United States declines to intervene, it respectfully refers the Court to 31 U.S.C.
8 § 3730(b)(1), which allows the relator to maintain the action in the name of the United States; providing,
9 however, that the “action may be dismissed only if the court and the Attorney General give written
10 consent to the dismissal and their reasons for consenting.” *Id.* The United States Court of Appeals for
11 the Ninth Circuit has held that, notwithstanding this language, the United States only has the right to a
12 hearing when it objects to a settlement or dismissal of the action. *U.S. ex rel. Green v. Northrop Corp.*,
13 59 F.3d 953, 959 (9th Cir. 1995); *U.S. ex rel. Killingsworth v. Northrop Corp.*, 25 F.3d 715, 723-25 (9th
14 Cir. 1994). Therefore, the United States requests that, should either the relator or the defendants propose
15 that this action be dismissed, settled, or otherwise discontinued, this Court provide the United States
16 with notice and an opportunity to be heard before ruling or granting its approval.
17

18 Furthermore, 31 U.S.C. § 3730(c)(3) permits the United States to be served with copies of all
19 pleadings filed in the action. Accordingly, the undersigned counsel for the United States will file a
20 Notice of Appearance for the purpose of receiving ECF notifications of filings in this case. The United
21 States reserves its right to order any deposition transcripts and to intervene in this action, for good cause,
22 at a later date. The United States also reserves its right to seek the dismissal of the relator’s action or
23 claim pursuant to 31 U.S.C. § 3730(c)(2)(A), and to request a stay of discovery pursuant to 31 U.S.C.
24 § 3730(c)(4).
25

26 Additionally, except for Maryland, the States, pursuant to their respective False Claims Acts or
27 analogous state statutes, reserve their right to intervene at a later date upon a showing of good cause and
28

request that all pleadings, including Notices of Appeal, court orders, motions or other pleadings filed in this action be served upon the States, *see, e.g.* Cal. Gov't Code § 12652(f)(1), Rev. Code Wash. § 74.66.060(3). The States also reserve their right to order any deposition transcript in this case; *see, e.g.* Cal. Gov't Code § 12652(f)(1), Rev. Code Wash. § 74.66.060(3), and request that if the relator or the defendant proposes that any claims be dismissed, settled, or otherwise discontinued, the Court require that such litigant(s) solicit the written consent of the States before applying for Court approval, *see, e.g.*, Cal. Gov't Code § 12652(c)(1), Rev. Code Wash. § 74.66.050(1).

With respect to Maryland, the False Health Claims Act provides, "[i]f the State does not elect to intervene and proceed with the action ... before unsealing the complaint, the court shall dismiss that action." Md. Code Ann., Health Gen., § 2-604(a) (7). Accordingly, Maryland requests that all claims asserted on its behalf be dismissed without prejudice.

Finally, the United States requests that the Court unseal: (1) Relator's Complaint; (2) the summons, if any; (3) this Notice of Election to Decline Intervention, with (Proposed) Order to Unseal; and (4) all other matters occurring in this action after the date the Court enters the unsealing order.

DATED: February 5, 2019

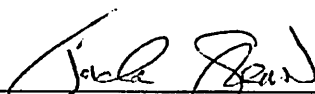
Respectfully submitted,

JOSEPH H. HUNT
Assistant Attorney General, Civil Division

DAVID L. ANDERSON
United States Attorney

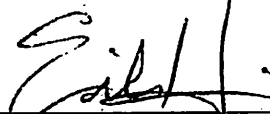

KIMBERLY FRIDAY
Assistant United States Attorney

DATED: February 5, 2019


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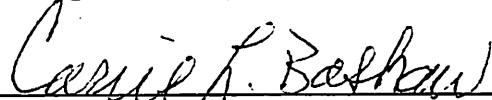
On behalf of the States:

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[PROPOSED] ORDER

The United States having declined to intervene in this action pursuant to the False Claims Act, 31 U.S.C. § 3730(b)(4)(B), IT IS HEREBY ORDERED that:

1. The Complaint, the summons, this Order, and the accompanying United States' Notice of Election to Decline Intervention are hereby unsealed.

2. Unless voluntarily dismissed pursuant to Fed. R. Civ. P. 41, the relator shall serve the Complaint on defendants within 90 days of the date of this Order.

3. The seal shall be lifted as to all other matters occurring in this action after the date of this Order.

4. Counsel for the United States shall file a notice of appearance in this action for the purpose of receiving ECF notifications of all pleadings and motions filed in this action, as provided for in 31 U.S.C. § 3730(c)(3). The United States may order any deposition transcripts and is entitled to intervene in this action, for good cause, at any time.


5. The parties shall serve all pleadings and motions filed in this action, including supporting memoranda and notices of appeal, upon the States, as provided for in the State FCAs. The States may order any deposition transcripts and are entitled to intervene in this action, for good cause, at any time.

6. Should the relator or the defendants propose that this action be dismissed, settled, or otherwise discontinued, the Court will provide the United States and the States with notice and an opportunity to be heard before ruling or granting its approval.

7. In accordance with the Maryland False Health Claims Act, Md. Code Ann., Health Gen, § 2-604(a)(7), the State of Maryland having declined to intervene in this matter, all claims asserted on behalf of Maryland are dismissed without prejudice.

IT IS SO ORDERED.

Dated: 2-7-19


HON. JACQUELINE SCOTT CORLEY
United States Magistrate Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, et al.,
Plaintiffs,
v.
GILEAD SCIENCES INC,
Defendants.

Case No.: 17-cv-02612-JSC
SEALED

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that:

- (1) I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California; and
- (2) On 2/11/2019, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an interoffice delivery receptacle located in the Clerk's office.

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WA Medicaid Fraud Control Unit
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Olympia, WA 98104

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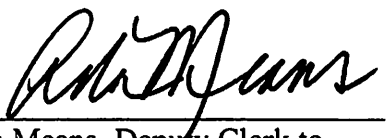
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10 Dated: 2/11/2019

11 Susan Y. Soong
12 Clerk, United States District Court

13 By: 
14 Ada Means, Deputy Clerk to
15 the Honorable Jacqueline Scott Corley
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